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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/879,494	06/12/2001	Carol B. Gell	PPC-787	5028

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EXAMINER

ANDERSON, CATHARINE L

ART UNIT            PAPER NUMBER

3761

DATE MAILED: 06/18/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/879,494	<b>Applicant(s)</b> GELL ET AL.	
	<b>Examiner</b> C. Lynne Anderson	<b>Art Unit</b> 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1)  Responsive to communication(s) filed on \_\_\_\_\_ .
- 2a)  This action is FINAL.                      2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4)  Claim(s) 1-28 is/are pending in the application.  
    4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5)  Claim(s) \_\_\_\_\_ is/are allowed.
- 6)  Claim(s) 1-28 is/are rejected.
- 7)  Claim(s) \_\_\_\_\_ is/are objected to.
- 8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.  
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.  
    If approved, corrected drawings are required in reply to this Office action.
- 12)  The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
    a)  All    b)  Some \*    c)  None of:  
    1.  Certified copies of the priority documents have been received.  
    2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_ .  
    3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
    \* See the attached detailed Office action for a list of the certified copies not received.
- 14)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
    a)  The translation of the foreign language provisional application has been received.
- 15)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |  |
|--|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>5</u> . | 6) <input type="checkbox"/> Other:   |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 3, 4, 10, 12, 14, 15, 16, 17, 18, 19, 23, and 28 recite the limitations "the strip" and "said strip". There is insufficient antecedent basis for this limitation in the claim.

Claims 1, 6, 19, and 23 recite the limitation "said pad". There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "the second face" in line 8. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "the thickness" in line 13. There is insufficient antecedent basis for this limitation in the claim.

Claim 14 recites the limitation "said pleats" in lines 9 and 12. There is insufficient antecedent basis for this limitation in the claim.

Claim 14 recites the limitation "said folded section" in line 10. There is insufficient antecedent basis for this limitation in the claim.

Claim 16 recites the limitation "each line" in line 20. There is insufficient antecedent basis for this limitation in the claim.

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Claim 18 recites the limitation "said shingles" in lines 4-5. There is insufficient antecedent basis for this limitation in the claim.

Claim 19 recites the limitation "the second face" in line 13. There is insufficient antecedent basis for this limitation in the claim.

Claim 19 recites the limitation "the thickness" in line 20. There is insufficient antecedent basis for this limitation in the claim.

Claim 23 recites the limitation "the second face" in line 21. There is insufficient antecedent basis for this limitation in the claim.

Claim 23 recites the limitation "the thickness" in line 26. There is insufficient antecedent basis for this limitation in the claim.

Claim 28 recites the limitation "said slits" in lines 24-25. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or  
(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

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Claims 1-3 and 5-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Sturino (5,713,886).

Sturino discloses a feminine hygiene pad, as shown in figure 1. The pad 10 comprises a main pad body 20 having an absorbent core 12, a cover material 14, and a barrier layer 16, and is designed so the main pad body 20 positioned in proximity to the wearer's vagina. The pad 10 also comprises a substantially planar strip 18, extending from the main pad body 20, designed to fit between the wearer's buttocks, preferably adhesively attached to a thong. The substantially planar strip 18 has a thickness  $W1$  that is relatively smaller than the thickness  $W2$  of the main pad body 20. The substantially planar strip 18 is made of stretchable material, and therefore may be stretched to a new length.

With respect to claim 2, the main pad body 20 has a length of 8.9 cm, as disclosed in column 2, lines 35-36.

With respect to claim 3, the substantially planar strip 18, which comprises an absorbent core 12, has a thickness in the range of about 0.16 cm to about 0.64 cm, as disclosed in column 2, lines 38-41.

With respect to claim 5, the opposing second face of the barrier layer 16 comprises adhesives 38, 40, and 42.

With respect to claim 6, the top portion of the main pad body 20 defines a front flap terminating at the distal end of the pad 10.

With respect to claim 7, the front flap is formed from the cover material 14 and barrier layer 16, which are stretchable.

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With respect to claim 8, the front flap comprises adhesives 38, 40, and 42.

With respect to claim 9, the front flap comprises adhesives 38, 40, and 42, which are fully capable of being attached to the wearer's body.

With respect to claim 10, the substantially planar strip 18 is stretchable, and therefore flexible.

With respect to claim 11, the substantially planar strip 18 comprises a thin plastic film, as described in column 2, lines 52-53, and a nonwoven polymeric material, as described in column 2, lines 65-66. These materials are non-elastic.

Claim 23 is rejected under 35 U.S.C. 102(e) as being anticipated by Markowiecki (6,350,258).

Markowiecki discloses a feminine hygiene pad 50, as shown in figure 3, comprising a main pad body 52 having an absorbent core 202, as shown in figure 8, positioned between a cover material 204 and a barrier layer 208. The main pad body 52 has a rear end and a opposed front end, as shown in figure 3. The pad 50 further comprises a substantially planar strip 54, which has a thickness that is relatively smaller than the thickness of the main pad body 52, as shown in figure 3. The substantially planar strip 54 is configured to be received between the buttocks of the wearer, as described in column 5, lines 4-6. An attachment piece 75 affixes the substantially planar strip 54 to the main body pad 52, as shown in figure 4.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sturino (5,713,886) as applied to claim 1 above.

Sturino discloses all aspects of the claimed invention, as described in the rejection of claim 1 above, with the exception of the substantially planar strip having a width of between 0.5 cm and 2.5 cm. Sturino describes the substantially planar strip 18 as being about 2.9 cm wide in column 2, lines 37-38. The substantially planar strip 18 is designed to be worn between the wearer's buttocks, preferably adhesively attached to a thong, and therefore making the tail thinner would improve comfort and fit. It would be obvious to one of ordinary skill in the art at the time of invention to make the substantially planar strip of Sturino with a width of between 0.5 cm and 2.5 cm, to improve comfort and fit.

Claims 24-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Markowiecki (6,350,258) as applied to claim 23 above.

Markowiecki discloses all aspects of the claimed invention, but remains silent as to the type of attachment piece used to connect the main body pad 52 and the substantially planar strip 54. Adhesives and hook-and-loop fasteners are well-known in the art to provide secure and economical connections, and it would therefore be obvious to one of ordinary skill in the art at the time of invention to attach the main body pad and the substantially planar strip of Markowiecki with adhesive or a hook-and-loop fastener.

***Allowabl Subject Matter***

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Claims 19-22 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

Claims 11-18 and 28 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

**Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent 4,597,759 pertains to an extendable hygienic pad.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Lynne Anderson whose telephone number is (703) 306-5716. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, Primary Examiner Dennis Ruhl can be reached on (703) 308-2262. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3590 for regular communications and (703) 306-4520 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

*CWA*  
cla  
June 10, 2002

*GKD*  
GLENN K. DAWSON  
PRIMARY EXAMINER